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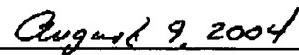
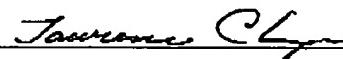
OFFICIAL

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Tugenberg et al. )  
For: Method for Purchasing Items )  
Over a Non-Secure )  
Communication Channel )  
Serial No.: 09/671,941 )  
Filed: September 27, 2000 )  
Examiner: Backer, F. )  
Art Unit: 3621 )

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being  
facsimile transmitted to the United States Patent and  
Trademark Office, Fax No. (703) 872-9306 on  
August 9, 2004.



(Date)

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attention: Board of Patent Appeals and Interferences

## TRANSMITTAL OF APPELLANTS' REPLY BRIEF

The enclosed reply brief is being filed in furtherance of the Examiner's Answer,  
mailed on June 10, 2004.

In connection with filing the reply brief, no fee is believed to be due. However in  
the event that the applicants are mistaken and a fee is in fact due in connection with the filing and  
the consideration of the reply brief, the undersigned authorizes the Commissioner and  
respectfully requests that the fee(s) be charged to deposit account 50-2117 of Motorola, Inc. The

Commissioner is further authorized to credit any overpayments to deposit account 50-2117 of  
Motorola, Inc.

Respectfully submitted,

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**APPELLANTS' REPLY BRIEF**

This reply brief is in furtherance of the Examiner's Answer, mailed on June 10, 2004, and includes the applicant's response to the Examiner's most recent arguments, and largely focuses on the Examiner's Response to Argument, which essentially summarizes the Examiner's position.

In responding to applicant's arguments, the Examiner has largely elected to not respond to much of the analysis presented by the applicants in regards to the examiner's obligation in presenting a properly supported *prima facie* argument. The applicants contend that the Examiner's rejection must be supported by facts which have been properly made part of the record. More specifically, any reference being relied upon in support of a rejection must be established as prior art, relative to the corresponding application, before any teaching and/or suggestion contained in the same can be relied upon in rejecting the corresponding application.

USSN: 09/671,941  
Atty Docket No. GE04609

Absent the minimal presentation of a prima facie rejection, the applicant has no burden to even respond.

In responding to applicants' argument, the Examiner continues to reiterate his apparent review of the parent application, despite the Examiner's further indications that the parent application is not readily available to the Examiner, because of the abandoned status of the parent application. Absent a showing of the necessary facts to support the Examiner's position, the Examiner has failed to establish a proper foundation for the attempted conclusions reached, which based upon the record as currently presented can neither be confirmed nor refuted. It should not be the applicants' responsibility to go beyond the factual record to review the appropriateness of the Examiner's rejection. Either the rejection has been properly presented and supported in the record or it has not. The opportunity and/or ability of the applicants to cure and/or overlook the defect is irrelevant.

The presence of a procedure available to the applicants for requesting a copy of the reference through the filing of a petition (assuming the same would in all cases be granted) is similarly irrelevant. The fact remains, the rejection on its face is incomplete. Any attempt to shift the burden for completion of the rejection to the applicants, in order for the applicants to have a full and fair opportunity to review the merits of the same is inappropriate.

The applicants would respectfully request that the Examiner's decision to finally reject the pending claims based upon a record, which does not fully support the articulated rejection be overturned, and that the claims be permitted to proceed to allowance.

Respectfully submitted,

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